

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
Telephone Number Portability)	
)	
The North-Eastern Pennsylvania Telephone Company)	CC Docket No. 95-116
Petition for Waiver of Section 52.23(b))	
of the Commission's Rules)	

To: Chief, Wireline Competition Bureau

Reply Comments

The North-Eastern Pennsylvania Telephone Company (“NEP”) hereby replies to the oppositions filed pursuant to the *Public Notice*¹ inviting public comment on NEP’s Petition for Waiver filed on March 23, 2004.²

In its Petition, NEP provided substantial and credible evidence demonstrating the infeasibility of its provisioning local number portability (“LNP”) by May 24, 2004. Contrary to the suggestions of the commenting parties, NEP did provide evidence of the extraordinary circumstances beyond its control which led it to conclude that waiver of the May 24, 2004 implementation date was necessary. These facts are not contradicted by the oppositions, which constitute only generalized quarrels with the

¹ *Public Notice*, Wireline Competition Bureau Seeks Comment on the Petition of the North-Eastern Pennsylvania Telephone Company for Temporary Waiver of the Commission’s Number Portability Requirements, CC Docket No. 96-116, DA 04-798, rel. Mar. 26, 2004.

² In the Matter of Telephone Number Portability, The North-Eastern Pennsylvania Telephone Company Petition for Waiver of Section 52.23(b) of the Commission’s Rules, filed March 23, 2004 (“Petition”). Oppositions were filed by Verizon Wireless and Dobson Communications Corporation (“Dobson”). Comments were filed by the Cellular Telecommunications & Internet Association (“CTIA”) and Nextel Communications, Inc. (“Nextel”). These filings are collectively referred to as “oppositions.”

concept of a waiver,³ rather than a response to the facts presented in NEP's request, and the good faith actions and commitments set forth in its Petition.

I. NEP HAS PREPARED FOR THE IMPLEMENTATION OF LNP CONSISTENT WITH REASONABLE EXPECTATIONS

Contrary to the suggestion of Verizon Wireless, NEP quickly initiated a comprehensive review of its circumstances and options and implemented the actions necessary to implement LNP once it was clear that intermodal LNP was required.⁴ As explained in the Petition, no clear requirement to provide wireline-to-wireless LNP existed prior to the Commission's *Nov. 10 Order* on intermodal porting.⁵ Prior to that time, NEP had no reason to modify the implementation of its multi-year upgrade endeavor and incur the costs to implement LNP outside the plan (by adding this function to antiquated switch technology).⁶ The planned upgrades contemplated the implementation of LNP capability in newly-installed switches in anticipation of the eventual receipt of a porting request.

Notwithstanding allegations to the contrary, NEP has proceeded with all due diligence. As noted in NEP's Petition, appropriate actions were taken by NEP to deploy advanced and modern switching technology, to accommodate the uncertainties regarding its switch manufacturer's commitments and problem solving capabilities, and to give consideration to possible interim measures regarding deployment of LNP capability. NEP's diligence has been demonstrated.

³ Neither Nextel nor Dobson requested local number portability from NEP.

⁴ Verizon Wireless incorrectly claims that NEP "waited until the last possible minute to seriously pursue compliance with the mandate." Verizon Wireless at 3. There was no clear mandate prior to November 10, 2003.

⁵ In the Matter of Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 95-116 (rel. Nov. 10, 2003) ("*Nov. 10 Order*").

⁶ Petition at 2.

II. THE CLARITY OF LNP REQUIREMENTS ARE EXAGGERATED

The commenting wireless carriers make a variety of unwarranted claims that NEP should have known the “entirely foreseeable consequences” of requirements for intermodal LNP which, it is claimed, existed for many years.⁷ These claims regarding the precision of LNP obligations are both simplistic and incorrect.

There are no other wireline local exchange carriers that provide service in NEP’s service area, and no wireline carrier has ever requested LNP from NEP. Accordingly, along with the wireline industry in general, NEP believed in good faith that there was no requirement to provide intermodal portability prior to the Commission’s *Nov. 10 Order*.

In its early number portability decisions, the Commission concluded that there were special problems associated with geographical disparity between the operations of wireless carriers and wireline carriers that prevented the application of wireless-to-wireline number portability. Recognizing these unresolved problems, the Commission assigned these issues to an industry work group.⁸ In a subsequent report, the NANC noted the fundamental differences in wireline and wireless service areas “resulting in an impact called ‘disparity’ . . . making it impossible for some wireless subscribers to port to wireline carriers.”⁹

⁷ See, e.g., Verizon Wireless at 1, Nextel at 6, and Dobson at 6.

⁸ Following recommendations from the North American Numbering Council (“NANC”) in May of 1997, the Commission decided to defer making any decisions regarding number portability involving wireless carriers. In the Matter of Telephone Number Portability, *Second Report and Order*, 12 FCC Rcd 12281, 12333. The Commission decided not to delay LNP for wireline carriers while certain mobile wireless service issues were studied further and announced that “it will probably be necessary to modify and update the current local number portability standards and procedures in order to support wireless number portability.” *Id.* No modification or update has ever occurred.

⁹ 1998 Working Group Report at Section 3.1.1 (emphasis supplied).

Given the fact that the expert industry work group assigned the task of resolving intermodal porting issues had reported repeatedly that critical issues could not be resolved, NEP and all other LECs had no reason to believe that an intermodal porting requirement was imminent. The only information available was that geographic disparity problems remained, that these problems were scheduled for resolution sometime in the future, but there was no indication if, when, or how these issues would be resolved. The facts are that until November 10, 2003, there was no reason to believe that these issues would or could be resolved shortly. Accordingly, the wireless carriers' claims that NEP "should have known" that intermodal porting was imminent are without merit.

III. THE WIRELESS CARRIERS' CLAIMS ABOUT CALL ROUTING AND COMPETITIVE FAIRNESS ARE MISPLACED

Verizon Wireless improperly introduces issues regarding call routing that are beyond the scope of the Petition and the issues presented by the Petition.¹⁰ Verizon Wireless does not provide any information regarding how its routing issue is remotely related to NEP's Petition. These superfluous arguments are unresponsive and should be ignored.

Nextel's claims that NEP would be competitively advantaged by the grant of the requested relief also miss the point.¹¹ As demonstrated in its Petition, NEP has, since the *Nov. 10 Order*, worked diligently to implement LNP in an orderly and rational manner. The waiver is sought as a means of ensuring that the public interest benefits which accompany porting are not outweighed by the public interest detriment of inefficient resource allocation. NEP also notes the irony of Nextel's argument in

¹⁰ Verizon Wireless at 7-10.

¹¹ Nextel at 7-8.

CERTIFICATION OF SERVICE

I, Darlene Poindexter, of Kraskin, Lesse & Cosson, LLC, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Reply Comments" was served via U.S. Mail, postage prepaid, on this 16th day of April 2004, on the following parties:

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